

JEFFER, MANGELS, BUTLER & MARMARO LLP
JEFFREY K. RIFFER (Bar No. 87016) (*JRiffer@jmbm.com*)
1900 Avenue of the Stars
Seventh Floor
Los Angeles, CA 90067-4308
Telephone: 310 203-8080
Facsimile: 310 203-0567

Attorneys for Defendant JUPITERIMAGES CORP.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

STEVE SHAPIRO and STEVE SHAPIRO
MUSIC,

Plaintiffs,

v.

JUPITERIMAGES CORPORATION,

Defendant.

CASE NO. 3:07-CV-5540 PJH

NOTICE OF REMOVAL TO FEDERAL
COURT

JMBM
Jeffer Mangels
Butler & Marmaro LLP

1 TO THE CLERK OF THE ABOVE-ENTITLED COURT:

2
3 PLEASE TAKE NOTICE that defendant Jupiterimages Corporation
4 ("Jupiterimages"), an Arizona corporation, hereby removes to this Court the state court action
5 described below:

6 1. On September 27, 2007, an action was commenced in the Superior Court of
7 the State of California for the County of San Francisco entitled Steven Shapiro and Steven Shapiro
8 Music vs. Jupiterimages Corporation, Case No. CGC 07-467713. A true and correct copy of the
9 Complaint is attached hereto as Exhibit "A."¹

10 2. Jupiterimages was served on October 1, 2007. A true and correct copy of the
11 Summons and proof of service is attached hereto as Exhibit "B."

12 3. All other State Court papers served on Jupiterimages are attached as Exhibit
13 "C."

14 4. A copy of the state court docket sheet is attached hereto as Exhibit "D."

15
16 FEDERAL JURISDICTION

17 5. This is a civil action of which this Court has original jurisdiction under 28
18 U.S.C. §1332(a) (diversity jurisdiction) and one which may be removed to this Court by
19 Jupiterimages pursuant to 28 U.S.C. § 1441(a) (cases where the district courts have original
20 jurisdiction may be removed).

21 6. Plaintiff Steve Shapiro is an individual and is a citizen of California because
22 he is domiciled in California. Plaintiff Steve Shapiro Music is a d/b/a of Steve Shapiro and, as such,
23 also a citizen of California because he is domiciled in California. Shapiro was domiciled in
24 California at the time the Complaint was filed and at the time of removal. See Eisenberg Decl. ¶ 4.

25 7. Jupiterimages is a citizen of Arizona and Connecticut. Jupiterimages is an

26 ¹ Plaintiff attached an Asset Purchase Agreement as an exhibit to the state court Complaint.
27 Such Agreement contains confidential business information and the parties explicitly agreed in
28 writing that such information was to be kept confidential. Accordingly, Jupiterimages is hereby
filing an administrative motion to seal limited portions of such Agreement.

1 Arizona corporation with its principal place of business in Connecticut. This was true at the time
2 the Complaint was filed and at the time of removal. See Eisenberg Decl. ¶ 3.

3 8. The matter in controversy exceeds the sum or value of \$75,000, exclusive of
4 interest and costs. Plaintiff's state court Complaint does not specify a dollar amount in the prayer
5 for relief. It states on the Caption page that it is unlimited civil case and that the value of the case
6 exceeds \$25,000. See Complaint. The Complaint seeks a judicial declaration and determination of
7 the parties' respective rights, duties and obligations under Paragraphs 5.1 (indemnity provision) and
8 6.1 (limits liability under certain conditions) of an April 18, 2006 Asset Purchase Agreement. Id.

9 9. Where, as here, the state court complaint does not specify a dollar figure for
10 the amount in controversy, the removing defendant bears the burden of establishing, by a
11 preponderance of evidence, that the amount in controversy exceeds the jurisdictional amount. See
12 Guglielmino v. McKee Foods Corp. - F.3d -, 2007 WL 2916193 *5, 2007 U.S. App. LEXIS 23654
13 *15 (9th Cir. Oct. 9, 2007) (affirmed district court order that there was federal diversity
14 jurisdiction).²

15 10. Where plaintiff seeks a judicial determination of liability under a contract, the
16 potential liability is the "amount in controversy." It makes no difference that the plaintiff is suing
17 for determination that it owes little -- or even nothing. See Hunt v. Washington State Apple
18 Advertising Comm'n, 432 U.S. 333, 347 (1977) ("In actions seeking declaratory ... relief, it is well
19 established that the amount in controversy is measured by the value of the object of the litigation");
20 Meridian Security Ins. Co. v. Sadowski, 441 F.3d 536, 539 (7th Cir. 2006) ("potential indemnity
21 obligation counts toward the jurisdictional minimum").

22 11. Jupiterimages has asserted that Shapiro must indemnify it for claims in
23 excess of \$75,000 and Shapiro, at the time of this removal, has not paid such claims. See Eisenberg
24 Decl. ¶ 6.

25 12. In addition, if attorney fees are recoverable by plaintiff (e.g., by contract), the

26
27 ² The opinion is also available at
28 [http://www.ca9.uscourts.gov/ca9/newopinions.nsf/5807B59144DF3F888825736F0052898A/\\$file/0516144.pdf?openelement](http://www.ca9.uscourts.gov/ca9/newopinions.nsf/5807B59144DF3F888825736F0052898A/$file/0516144.pdf?openelement).

1 fee claim is included in determining the amount in controversy, regardless whether the fee award is
 2 mandatory or discretionary. See Galt G/S v. JSS Scandinavia, 142 F.3d 1150, 1155 (9th Cir. 1998);
 3 Morrison v. Allstate Indem. Co., 228 F.3d 1255, 1265 (11th Cir. 2000) ("reasonable amount of fees
 4 is included in the amount in controversy").

5 13. Here, Paragraph 8.1 provides that the prevailing party in litigation over the
 6 Asset Purchase Agreement is entitled to recover its attorney fees. See Eisenberg Decl. ¶ 7.

7 14. Litigation in federal court is expensive. Even conservatively, the Rule 26(f)
 8 Meeting, drafting written discovery and taking depositions, responding to plaintiff's discovery,
 9 motions to dismiss, summary judgment motions (if the motion to dismiss is not granted) and trial (if
 10 the summary judgment motion is not granted), will cost well in excess of \$75,000. See Eisenberg
 11 Decl. ¶ 8.

12 15. Accordingly, there is federal diversity jurisdiction and this case can be
 13 removed from state court to federal court.

14 INTRADISTRICT ASSIGNMENT

15 16. The state court complaint was filed in the Superior Court for the County of
 17 San Francisco. As such, it should be removed to the San Francisco Division of this Court pursuant
 18 to Local Rule 3-2(e).

19 DATED: October 31, 2007

JEFFER, MANGELS, BUTLER & MARMARO LLP
 JEFFREY K. RIFFER

21 BY: --S-- JEFFREY K. RIFFER

22 JEFFREY K. RIFFER
 Attorneys for Defendant JUPITERIMAGES
 CORPORATION.